amazon.com

February 24, 2011

Sen. George Runner (Ret.)
Member, Board of Equalization
State of California
400 Capitol Mall
Suite 2340
Sacramento, CA 95814

Re: Amazon Position on Sales Tax Nexus Bills

Dear Senator Runner:

Thank you for your recent request for information about Amazon.com's position on sales tax nexus bills introduced this year in the California Legislature. This letter is our response; please feel free to share it with others as you deem appropriate.

Amazon respectfully opposes the new tax collection schemes proposed in AB 153 (Skinner), AB 155 (Calderon), SB 234 (Hancock), and SB 655 (Steinberg), because they are either facially unconstitutional or would construct Trojan horses for functionally identical unconstitutional regulation. Similar legislation in other states has, counterproductively, led to job and income losses and little, if any, new tax revenue.

The U.S. Supreme Court's *Quill* decision prohibits a state from requiring sales tax collection by sellers that lack physical presence in the state. AB 153, AB 155, SB 234, and SB 655 are unconstitutional because they ultimately would be used to require sellers with no physical presence in California to collect sales tax merely on the basis of contracts with California advertisers. One prominent advocate of this approach concludes that it applies not only to advertising through in-state websites, but also to advertising via television and telecommunications providers, as well as through magazines and other publications. This conclusion is supported by the broad wording of AB 153 and the even broader wording in AB 155, SB 234, and SB 655. In addition, AB 155 contains provisions that also would run afoul California Constitutional case law and federal statute.

If any of these new tax collection schemes were adopted, Amazon would be compelled to end its advertising relationships with well over 10,000 California-based participants in the Amazon "Associates Program." (Participants in the Associates Program place Amazon advertisements on their websites, and then are compensated by Amazon for purchases made by visitors whom they refer to Amazon's website. Other online sellers have similar programs and participants, which are more generally named "affiliates.")

The California legislature first considered, and actually passed, similar legislation in 2009. Amazon notified the governor and the leaders of the Legislature that we were prepared to terminate

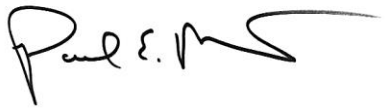
contracts with California-based Associates, but the governor vetoed the bill before that became necessary. Since then, three states (North Carolina, Rhode Island, and Colorado) have enacted legislation with similar provisions. (AB 155 includes provisions nearly identical to parts of the Colorado statute against which a federal court recently issued, on constitutional grounds, a preliminary injunction.) In these three states, Amazon has terminated its advertising contracts with in-state affiliates, and has collected no sales tax for any of these states, nor paid any referral fees since then to any in-state Associates. In addition, last month Illinois passed a nexus bill out of the legislature. Amazon has notified IL-based Associates that we will terminate their contracts if the governor signs the bill, and already the leadership of another state has invited Illinois affiliates to relocate there.

Thus, these bills would provide no new tax revenue collected by Amazon or others who sever their relationships with California-based advertisers, and any revenue estimates should take this into account. Of course, California consumers would still be able to purchase online at www.amazon.com from Amazon's retail business, so these bills would only deny California-based organizations and individuals the advertising fees they currently receive from out-of-state retailers and, ironically, California's general fund could suffer a net *loss* in revenue as affiliates pay less income tax or move out of the state.

California instead should heed the U.S. Supreme Court. A national resolution, involving tax simplification evenhandedly applied, is the legally-permissible path for states to follow. The approaches of AB 153, AB 155, SB 234, and SB 655 could be used to undermine the purposes and viability of the national streamlining effort and, thus, similar bills have been opposed by the relevant task force of the National Conference of State Legislatures, the Council on State Taxation, and the Business Advisory Council to the Streamlined Sales Tax Project ("SSTP"), all of which have supported SSTP instead.

Thank you again for your interest in this matter, and I respectfully ask that you oppose the unconstitutional new tax collection schemes of AB 153, AB 155, SB 234, and SB 655. Please let me know if you have any questions. I can be reached at 202-347-7390 or pmisener@amazon.com.

Sincerely yours,



Paul Misener
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